

**Minutes
HEARING OFFICER
DECEMBER 18, 2007**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

David Williams, Hearing Officer
Steve Abrahamson, Planning and Zoning Coordinator
Jon Christopher, Planner II
Shawn Daffara, Planner II
Alan Como, Planner II
Diana Kaminski, Senior Planner
Derek Partridge, Planning I
Nick Graves, Planning Intern

Number of Interested Citizens Present: 11

Meeting convened at 1:30 PM and was called to order by Mr. Williams.

1. Mr. Williams approved the Hearing Officer Minutes for November 20, 2007 and December 4, 2007.

2. Mr. Williams noted that the following case(s) had been continued:
 - Hold a public hearing for a request by **CENTRAL PLAZA - FOOD CITY NO. 96 (PL070481)** (M. Brennan Ray/Burch & Cracchiolo, applicant; Bashas Inc., property owner) located at 1338 East Apache Boulevard in the CSS, Commercial Shopping and Services District for:

ZUP07174 Use permit to allow outdoor retailing (outdoor roasting/retail food productions).
CONTINUED TO THE FEBRUARY 5, 2008 HEARING OFFICER HEARING
 - Hold a public hearing for a request by the **KERBER RESIDENCE (PL070497)** (Gregory Kerber, applicant/property owner) located at 401 East Hermosa Circle in the R1-6, Single Family Residential District for:

ZUP07184 Use permit to park in the front yard setback.
VAR07030 Variance to reduce the front yard setback from fifteen feet (15') to seven feet (7') for an open structure.
CONTINUED TO JANUARY 3, 2008 HEARING OFFICER
 - Hold a public hearing for a request by the **RICHARDS RESIDENCE (PL070501)** (John Richards, applicant/property owner) located at 1031 West Fremont Drive in the R1-6, Single Family Residential District for:

VAR07031 Variance to reduce the east side yard setback from five feet (5') to three feet (3').
CONTINUED TO JANUARY 3, 2008 HEARING OFFICER

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3. Hold a public hearing for a request by **SPRINGHILL SUITES (PL070378)** (Art Sandoval/Iconicity, Inc., applicant; Mike Wimbush, V.P. Operations/World Travel Inns Limited Partnership VII, property owner) located at 1601 W Rio Salado Parkway in the GID, General Industrial District for:

ZUP07189 Use permit to allow the expansion of existing hotel use within the GID, General Industrial District.

Art Sandovan was present to represent this case.

Mr. Williams stated that it was his understanding that there was no additional parking demand required and that excessive parking was available. Diana Kaminski, staff planner, confirmed that 41 parking spaces were required however 150 parking spaces are available. She stated that no additional public input or comments had been received since the staff report was issued.

Mr. Williams questioned the landscape calculations. Diana Kaminski responded that after the removal of landscape area due to the expansion, 31% landscape remained – only 25% landscape is required.

DECISION:

Mr. Williams approved PL070378/ZUP07189 subject to the following conditions:

1. This use permit is valid for SPRINGHILL SUITES and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
3. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit.

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4. Hold a public hearing for a request by the **FITZHUGH RESIDENCE (PL070485)** (Edward Fitzhugh, applicant/property owner) located at 2059 East La Vieve Lane in the AG, Agricultural District for:

ZUP07177 Use permit standard to reduce the west side yard setback by twenty percent (20%) from twenty feet (20') to sixteen feet (16').

ZUP07190 Use permit to allow a second story addition (Sports/Recreation Room).

Edward Fitzhugh was present to represent this case.

Shawn Daffara, staff planner, stated that a letter of opposition had been received from the Circle G Ranches Homeowners Association who stated that their architectural review committee had not reviewed the plans prior to this hearing.

Mr. Williams noted that the west elevation is the side facing the neighbor and asked for information on the height of the existing home as well as the heights of surrounding structures in the area.

Shawn Daffara responded that although there was no specific height dimensions available at this time, it was consistent with two story structures in the area.

Mr. Williams questioned the applicant on the other two story structures in the area. Mr. Fitzhugh stated that there was a rectangular two story home a couple of blocks over that was very similar to his plans, and was approximately the same height. He stated that there were two story structures in the neighborhood that exceed the height of his planned addition.

Mr. Williams tabled this request to give the applicant an opportunity to review his plans and determine the elevation height. At that time, Mr. Fitzhugh stated that he had spoken with his architect in the interval and estimated that the height of the addition was under thirty (30) feet. He stated that there was one proposed window of approximately six (6) feet on the west side of the addition.

Mr. Williams questioned staff as to the privacy issues of two story structures onto neighboring properties and asked if this request would need to meet the usual criteria for this issue.

Shawn Daffara stated that there had been no complaints on these proposed plans and that he believed that glass block would sufficiently meet the privacy and security concerns if a third condition of approval was added.

Mr. Williams asked Steve Abrahamson what the usual wording for this condition would read; Steve replied the condition should indicate that opaque or glass block should be provided to insure privacy.

DECISION:

Mr. Williams approved PL070485/ZUP07177/ZUP07190 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The addition shall be compatible with the existing dwelling in design, colors and materials.
3. ~~If Building Code allows, the second story windows shall be of clear story design.~~ **Second story windows shall be opaque or glass block materials on west elevation. MODIFIED BY HEARING OFFICER**

5. Hold a public hearing for a request by **FAIRLANES VILLAGE CENTER – PREPPY PET SUITES (PL070499)** (Chad Watkins, applicant; Zonline LLC, property owners) located at 4415 South Rural Road, Suite Nos. 1 – 4, in the PCC-2, Planned Commercial Center General District for:

ZUP07185 Use permit to allow overnight dog boarding.

Chad Watkins was present to represent this case.

In response to a question by Mr. Williams, Derek Partridge, staff planner, stated that he would be handling the case particulars for Sherri Lesser, staff planner. He confirmed that there had been no public input received and that condition of approval #3 should be modified to include a requirement that the new outdoor area be routed through the Development Plan Review process.

Mr. Williams noted that, based on recent cases of this nature, these conditions of approval should also include stipulations regarding animal waste and the disposal of same.

DECISION:

Mr. Williams approved PL070499/ZUP07185 subject to the following conditions:

1. **The dog walking area is to be kept clean and** animal waste to be removed from the premises immediately and on a continual basis throughout the day. ~~The dog walking area to be kept clean at all times.~~ **MODIFIED BY HEARING OFFICER**
2. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
3. Obtain separate approval for modified site plan **to include the new outdoor area** from the Development Review Commission and Building Safety Division prior to the use permit becoming effective. **MODIFIED BY HEARING OFFICER**
4. Update parking record for center and rescind obsolete recorded parking affidavits.
5. **Provide an airtight refuse container outside, and collection bags to use for animal waste. ADDED BY HEARING OFFICER**
6. **Animal waste should be in sealed bags. ADDED BY HEARING OFFICER**

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6. Hold a public hearing for a request by **LAMSON COLLEGE (PL070502)** (Mathew Holm/Cresa Partners, applicant; Argus Realty Investors, property owner) located at 875 West Elliot Road in the GID, General Industrial District for:

ZUP07186 Use permit to allow a vocational school in the GID, General Industrial District.

Gary Greg & Jim Guymont were present to represent this case.

Shawn Daffara, staff planner, stated that there had been no public input received.

Mr. Williams noted that no parking analysis had been included and noted his concern over the availability of student parking. Shawn Daffara referenced page 3 of the staff report, stating that parking required for the school was 162 spaces, total parking required was 856 spaces and total parking provided was 1,248 spaces.

DECISION:

Mr. Williams approved PL070502/ZUP07186 subject to the following conditions:

1. The use permit is valid for the Elliot Corporate Center – Lamson College and may be transferable upon Development Services staff review.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. Any expansion or intensification of the use shall require a new use permit to be approved.
5. All business signs shall be approved through Development Review, and permits obtained.

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7. Hold a public hearing for a request by the **MAYO RESIDENCE (PL070505)** (Frank Mayo, applicant/property owner) located at 1349 West Elna Rae Street in the R1-6, Single Family Residential District for:

ZUP07187 Use permit to allow an accessory building (garage).

Frank Mayo was present to represent this case.

Alan Como, staff planner noted that there had been no additional public input received.

Mr. Williams questioned whether this structure was intended to be a workshop or a garage? Alan Como responded that the applicant had called it a garage in his project submittal, however he has indicated its intended use is to be a woodworking area and storage.

Mr. Williams questioned if the City of Tempe would require the applicant to improve the alley in order to allow a car to be parked in the garage. He noted that a door is included in the applicant's plans and asked which way it is facing. Alan Como responded that the door faces towards the back alley but there is no gate or opening in the wall to allow for vehicle access.

Steve Abrahamson stated that the applicant would not be required to pave the alley but to dust proof that area should the garage be used for a vehicle entrance from the alley. Mr. Williams asked if there was any concern calling it a garage if it was to be used for something else. Steve Abrahamson said not necessarily, the use permit is to allow an accessory building; whether it is a garage or a workshop or an accessory building really doesn't make any difference for the use permit intent.

Mr. Mayo confirmed in response to a question from Mr. Williams that there was no opening in wall, and no intent to use as an everyday garage.

Mr. Williams asked the applicant if he had any intention of opening up the west side yard to allow vehicle access; Mr. Mayo stated that he did not.

DECISION:

Mr. Williams approved PL070505/ZUP07187 subject to the following conditions:

1. Should the accessory building be converted into a garage to store vehicles, the property owner shall construct a gated opening in the rear wall, and pave the alley from the east property line to Priest Road.
2. Obtain all necessary clearances from the Building Safety Department.
3. The proposed building shall match the existing residence in materials, color and design.
4. The accessory building shall be built no taller than principle structure.

8. Hold a public hearing for a request by the **NATIONAL MASSAGE CLUB (PL070511)** (Dennis Teufel, applicant; Matt Building 1 LLC, property owner) located at 8100 South Priest Drive, Suite 101, in the GID, General Industrial District for:

ZUP07188 Use permit to allow a massage facility in the GID, General Industrial District.

Dennis and Angela Teufel were present to represent this case.

Derek Partridge, staff planner, stated that no additional information or public input had been received.

Mr. Williams reviewed the Conditions of Approval with the applicants. The applicants stated that they understood the conditions and were in agreement.

DECISION:

Mr. Williams approved PL070511/ZUP07188 subject to the following conditions:

1. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
2. The use permit is transferable. Should the business be sold, the new owners must reprocess for administrative review.
3. The use permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer/Board of Adjustment.
4. Any expansion or intensification of use shall require a new use permit to be approved.
5. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
6. All required State, County and Municipal permits shall be obtained or the use permit is void.
7. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the use permit becoming effective.
8. All business signs shall be Development Review approved and permits obtained.

9. Hold a public hearing for a request by the **HAMM RESIDENCE (PL070516)** (Dan Uribe/Uribe Ink Design Studios LLC, applicant; Kirt Hamm, property owner) located at 9314 South Rita Lane in the AG, Agricultural District for:

ZUP07192 Use permit to allow a unattached accessory building (gazebo).

Dan Uribe was present to represent this case.

Jon Christopher, staff planner, stated that since the staff report had been issued a letter from the Homeowners Association agreeing with the applicant's request had been received. A revised plan had also been received from the contractor and staff has no problem with it. Copies of both items were given to Mr. Williams.

DECISION:

Mr. Williams approved PL070516/ZUP07192 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. Detached structure shall be compatible in design with the main dwelling; colors to match existing dwelling.

10. Hold a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **ROWE RESIDENCE (PL070487/ABT07029)** (Richard Rowe, property owner) Complaint CE073237 located at 1405 North Rose Street in the R1-6, Single Family Residential District.

Andres Lara, City of Tempe – Neighborhood Enhancement Department, stated that only minimal improvements have been made and agreed with Mr. Williams that this case had been active for four (4) or five (5) months.

Richard Rowe was present to represent the property owner. He stated that he was 65 years of age and due to the intense heat when the citations were first issued he was unable to bring the property up to code until the weather cooled down. He explained that at his age he can't work in the heat and there was not much shade out there. As soon as the weather cooled down, which was only a little over a month ago, he had begun work on the property. Since that time 75% of the property has been cleaned up.

He estimated that he needed another thirty (30) days to complete the work. Mr. Rowe questioned the city's legal restrictions on mulch and landscape trimmings. He stated that he had valley fever in 1962 and tries to keep the dust down. He detailed his efforts to clean the animal waste and it was agreed that staff or Mr. Lara would share the city's dog laws in this respect with him.

Mr. Williams noted that a pickup and RV were parked in the back yard and asked if it was ok for the RV to remain there. Staff is to investigate and recommend.

DECISION:

Mr. Williams continued abatement proceedings for PL070487/ABT07029 to the January 15, 2008 Hearing Officer.

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11. Hold a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **LOPEZ RESIDENCE (PL070488/ABT07030)** (Frank and Adela Lopez, property owners) Complaint CE074242 located at 734 East Papago Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Andres Lara, City of Tempe – Neighborhood Enhancement Department, stated that there had been little change in the property.

DECISION:

Mr. Williams approved abatement proceedings for PL070488/ABT07030.

12. Hold a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **KELCHNER RESIDENCE (PL070489/ABT07031)** (Paul and Henrietta Kelchner, property owners) Complaint CE074609 located at 39 East McKinley Street in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Andres Lara, City of Tempe – Neighborhood Enhancement Department, stated property is still not in compliance.

DECISION:

Mr. Williams approved abatement proceedings for PL070489/ABT07031.

The next Hearing Officer public hearing will be held on **Thursday, January 3, 2008.**

There being no further business the public hearing adjourned at 2:25 PM.

Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:



Steve Abrahamson, Planning & Zoning Coordinator
for David Williams, Hearing Officer

SA:dm